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EXAMINER
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NEJAD, MAHDI H

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* GILBERT MCNEIL SR.

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Appeal 2019-004240<sup>1</sup>  
Application 14/120,472  
Technology Center 3700

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Before PHILLIP J. KAUFFMAN, TARA L. HUTCHINGS, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>2</sup> appeals from the Examiner’s decision to reject claims 1, 3, and 6–8. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

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<sup>1</sup> We reference herein the Specification filed May 23, 2014 (“Spec.”), Final Office Action mailed June 8, 2017 (“Final Act.”), Appeal Brief filed December 3, 2018 (“Appeal Br.”), and Examiner’s Answer mailed February 27, 2019 (“Ans.”).

<sup>2</sup> “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the inventor, Gilbert McNeil, Sr., as the real party in interest. Appeal Br. 1.

SUBJECT MATTER ON APPEAL

“This invention relates to brake systems and more particularly to a brake bleeding apparatus to be used when changing the brakes of an automobile.” Spec. 1:6–8. Claim 1, reproduced below, is the sole independent claim on appeal and representative of the claimed subject matter.

1. A brake bleeder apparatus for a vehicle including:
  - an elongated housing means having an elongated aperture formed therein;
  - a longitudinally extending spring aligned for slidable movement in the aperture of the housing;
  - a first cylindrical shaped cap coupled to lowermost portions of the elongated housing means for holding the longitudinally extending spring in the housing means in a predetermined position and for engaging a brake pedal of the vehicle;
  - an elongated plunger aligned in the elongated aperture in the housing means for slidably engaging upper portions of the longitudinally extending spring to selectively move and compress the longitudinally extending spring;
  - an upper cap having an aperture formed therethrough coupled to uppermost portions of the elongated housing for aligning the elongated plunger in the elongated housing for slidable movement therein; and
  - a second cylindrical shaped cap coupled to uppermost portions of the elongated plunger for engaging a steering wheel of the vehicle so that when the first cylindrical shaped cap is aligned to engage the brake pedal and the second cylindrical shaped cap is aligned to engage the steering wheel, the longitudinally extending spring can be selectively compressed and released to expand as desired.

Appeal Br., Claims App. (claim status identifier omitted).

## REJECTIONS

<b>Claim(s) Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>
1	103	Avery, <sup>3</sup> Digman <sup>4</sup>
1, 3, 6	103	Digman, Lee <sup>5</sup>
7, 8	103	Digman, Lee, Menten <sup>6</sup>

## ANALYSIS

### *Obviousness Based on Avery and Digman*

Appellant contends that neither Avery nor Digman teaches the second cylindrical shaped cap recited in independent claim 1. Appeal Br. 8–9. Appellant similarly contends the combined teachings of Avery and Digman would not result in the recited second cylindrical shaped cap. *Id.* at 9. Appellant’s contentions are persuasive.

Independent claim 1 recites a first cylindrical cap for engaging a brake pedal of a vehicle and a second cylindrical cap for engaging the steering wheel. Namely, independent claim 1 recites:

a second cylindrical shaped cap coupled to uppermost portions of the elongated plunger *for engaging a steering wheel of the vehicle so that when the first cylindrical shaped cap is aligned to engage the brake pedal and the second cylindrical shaped cap is aligned to engage the steering wheel*, the longitudinally extending spring can be selectively compressed and released to expand as desired.

Appeal Br., Claims App. (emphasis added).

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<sup>3</sup> US 2,932,504, issued Apr. 12, 1960.

<sup>4</sup> US 2,513,850, issued July 4, 1950.

<sup>5</sup> US 2012/0187358 A1, published July 26, 2012.

<sup>6</sup> US 2013/0284015 A1, published Oct. 31, 2013.

Avery describes a pressure exerting strut for use in the repair or conditioning of a vehicle brake system. Avery 1:44–47, 2:9–11. Strut X includes member A, i.e., elongated housing, and member B, i.e., elongated plunger. *Id.* at 2:40–46, 60–63, Fig. 2. Spring 25 biases member B out of member A. *Id.* at 3:48–55, Fig. 2. The ends of elongated members A, B are closed by bumpers 22, 23, respectively. *Id.* at 2:63–69, Fig. 2. Plate 45 grips forward surface 14 of seat Y to provide a reaction force pressing one of bumpers 22, 23 against brake pedal Z. *Id.* at 3:61–4:5, 4:38–42, 6:13–16 (claim 6), Fig. 1.

Digman describes a tool for holding a pedal in a selected elevated or depressed position. Digman 1:1–8. The tool includes shaft member 21, i.e., elongated plunger, which is slidable within upright tubular member 10, i.e., elongated housing. *Id.* at 2:3–10, 23–26, Fig. 2. Spring 24 biases shaft member 21 out of tubular member 10. *Id.* at 2:33–39, Fig. 2. A lower end of tubular member 10 terminates in base 11, and an upper end of shaft member 21 terminates in head 22. *Id.* at 2:3–10, 23–26, 3:44–50, Fig. 1. In one embodiment, movable abutment 30 coupled to the upper portion of shaft member 21 engages beneath dashboard 36 of a motor vehicle to provide a reaction force pressing base 11 against brake pedal 37. *Id.* at 3:18–36, Fig. 3. In another embodiment, head 22 engages beneath dashboard 36 to provide the reaction force pressing base 11 against brake pedal 37. *Id.* at 3:44–50.

Each of Avery's bumper 23 and Digman's head 22 is attached to a plunger. Avery discloses that bumper 22 engages brake pedal Z. Avery 2:69–71, Fig. 1. Digman teaches that head 22 engages beneath dashboard 36 or against the brake pedal. Digman 3:44–50. Given that neither Avery's bumper 23, nor Digman's head 22 engages the steering

wheel of the vehicle, the Examiner has not shown persuasively that the combined teachings of Avery and Digman would result in the second cylindrical shaped cap recited in independent claim 1. Therefore, we do not sustain the rejection of independent claim 1 under 35 U.S.C. § 103 as unpatentable over Avery and Digman.

*Obviousness Based on Digman and Lee*

Appellant argues that neither Digman nor Lee teaches “a first cylindrical shaped cap coupled to lowermost portions of the elongated housing means for holding the longitudinally extending spring in the housing means in a predetermined position and for engaging a brake pedal of the vehicle,” as recited in independent claim 1. Appeal Br. 10–11. Appellant’s argument is persuasive.

The Examiner relies on Digman’s base 11 for disclosing the recited first cylindrical shaped cap. Final Act. 9–10. According to the Examiner, base 11 has an inner cylindrical shaped feature to threadingly engage with the lowermost portions of tubular member 10. *Id.* at 9. Even if Digman’s base 11 includes a cylindrically shaped opening to threadingly receive tubular member 10, base 11 has a rectangular, not cylindrical, shape, as shown in Figure 1. There is insufficient support for the Examiner’s finding that Digman’s base 11 discloses the first cylindrical shaped cap recited in independent claim 1, and the Examiner does not explain why the recited first cylindrical shaped cap would have been obvious. We, therefore, do not sustain the rejection of independent claim 1, as well as claims 3 and 6 depending therefrom, under 35 U.S.C. § 103 as unpatentable over Digman and Lee.

*Obviousness Based on Digman, Lee, and Menten*

The Examiner does not cite Menten for any teaching that might remedy the deficiency in the combined teachings of Digman and Lee as applied to independent claim 1. Therefore, we do not sustain the rejection of claims 7 and 8 under 35 U.S.C. § 103 as unpatentable over Digman, Lee, and Menten.

CONCLUSION

<b>Claim(s) Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1	103	Avery, Digman		1
1, 3, 6	103	Digman, Lee		1, 3, 6
7, 8	103	Digman, Lee, Menten		7, 8
<b>Overall Outcome</b>				1, 3, 6–8

REVERSED